

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

Phone (415) 355-7900 Fax (415) 355-8566

<http://www.ca9.uscourts.gov/mediation>

MEDIATION QUESTIONNAIRE

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are **not** confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):	16-17238		
District Court/Agency Case Number(s):	3:16-cv-03533-WHA		
District Court/Agency Location:	Northern District of California, San Francisco Division		
Case Name:	Ingalls et al.	v.	Spotify USA Inc.
If District Court, docket entry number(s) of order(s) appealed from:	Docket No. 39		
Name of party/parties submitting this form:	Spotify USA Inc.		

Please briefly describe the dispute that gave rise to this lawsuit.

Plaintiffs Gregory Ingalls and Tony Hong purchased subscriptions to Spotify's Premium music streaming service. Plaintiffs allege that as part of the streaming service, Spotify made automatic renewal or continuous service offers in violation of California law. They bring putative class claims for (1) violation of California's Automatic Purchase Renewal Law, (2) violation of California's Unfair Competition Law, and (3) declaratory relief.

Briefly describe the result below and the main issues on appeal.

Spotify moved to compel individual arbitration of plaintiffs' claims based on the mandatory arbitration provision and class action waiver in Spotify's Terms and Conditions of Use ("T&C"). The district court denied Spotify's motion, finding the arbitration provision was unenforceable. The main issues on appeal are: (1) whether the incorporation of AAA rules in a consumer contract establishes delegation of arbitrability and validity; (2) if those issues were not delegated, whether the district court erred in concluding the arbitration agreement was unconscionable; and (3) whether the district court erred in holding the unconscionable provisions, if any, are not severable from the arbitration agreement.

Describe any proceedings remaining below or any related proceedings in other tribunals.

Spotify has answered the complaint and the district court has issued a scheduling order with discovery deadlines. Spotify moved to stay the proceedings before the district court pending the resolution of this appeal, but the district court denied the motion.

Provide any other thoughts you would like to bring to the attention of the mediator.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at ca09_mediation@ca9.uscourts.gov. Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

CERTIFICATION OF COUNSEL

I certify that:

☐ a current service list with telephone and fax numbers and email addresses
☒ is attached (see 9th Circuit Rule 3-2).

☐ I understand that failure to provide the Court with a completed form and
☒ service list may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

Note: Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **File this document electronically** in Appellate ECF by choosing Forms/Notices/Disclosure > File a Mediation Questionnaire.

SERVICE LIST

Pursuant to Circuit Rule 3-2, Defendant Spotify USA Inc. certifies that the parties in this case, and the names, addresses, and telephone numbers of their respective counsel are as follows:

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9th Circuit Case Number(s) 16-17238

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) 12/13/2016 .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) /s/Nancy Gonzalez

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)